(1)S.B.CIVIL WRIT PETITION NO.4226/2001
(M/s Navbharat Marbles Industries v. Ajmer Vidyut Vitran Nigam Ltd., Ajmer & Ors.)

(2)S.B.CIVIL WRIT PETITION NO.452/2002
(M/s Navbharat Marbles Industries v. Ajmer Vidyut Vitran Nigam Ltd., Ajmer & Ors.)

(3)S.B.CIVIL WRIT PETITION NO.6769/2003
(M/s Navbharat Marbles Industries v. Ajmer Vidyut Vitran Nigam Ltd., Ajmer & Ors.)

Date of Order :: 20th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. Ravi Bhansali, for the respondents.

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After making an inspection on basis of Load Survey Report, it was observed that the consumer (petitioner) abstracted electrical energy without allowing the meter to record it by using external means, accordingly, a decision was taken to discontinue electricity connection as per general conditions of supply. Being aggrieved by the same the petitioner preferred a writ petition (SBCWP No.4226/2001) wherein while issuing notice to show cause to the respondents an interim order was passed by this Court to restore electricity connection subject to the condition the petitioner deposits the amount in terms of clause 29B(1)(a) of the General Conditions of Supply. In pursuant to the interim order aforesaid the electricity connection was restored. However, during pendency of the writ petition referred

above, a final assessment of abstracted electrical energy was made and that was challenged by another writ petition (SBCWP No.452/2002) and that too came to be admitted by this Court with an interim direction not to take any coercive process against the petitioner. The petitioner while pursuing SBCWP No.452/2002 also preferred an appeal assailing validity of the final assessment and that appeal came to be rejected by an order dated 13.1.2003. The appellate authority while rejecting the appeal, held as under:-

> "1. On the basis of the load survey report taken by the MRI and the joint inspection Report prepared by the officers of AVVNL, it has been concluded beyond doubt that the consumer has indulged in theft of energy and interfered with registration of energy by the meter using external means.
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> 2. Reasonable opportunity of hearing against the provisional assessment made by the SE (M&P) Udaipur was given by the Dy. CE (CM&V) AVVNL, Ajmer but the consumer did not avail the same. The final assessment order passed by the Dy. CE (CM&V) is correct and in accordance with the clause 29(K) of GCOS.
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> 3. AVNL as successor company of the erstwhile RSEB is fuly authorized to exercise all powers delegated in the GCOS and therefore, objections raised by the consumer in this regard are not valid."

A challenge was also given by the petitioner to the order passed by the appellate authority by way of filing SBCWP No.6769/2003 and that too came to be admitted by this Court. In the fashion as stated above, three writ petitions of the petitioner are under consideration of this Court.

The writ petition bearing No.4226/2001 has virtually become infructuous in view of the fact that the electricity connection has already been restored in pursuant to an interim order passed by this Court. The writ petition relating to final assessment has also become infructuous in view of the order passed by the appellate authority. The writ petition now survives is only under which the order of the appellate authority is under challenge.

The contention of counsel for the petitioner is that the order passed by the appellate authority is absolutely non-speaking and unreasoned order. The appellate authority without dealing with the contentions raised in memo of appeal in quite mechanical manner disposed of the appeal preferred by the petitioner. It is asserted by counsel for the petitioner that by similar kind of orders number of appeals relating to other consumers were also decided by the appellate authority.

Counsel for the respondents after perusing the order passed by the appellate authority find himself unable to controvert the contention raised on behalf of the petitioner.

The perusal of the order impugned i.e. passed by the appellate authority, I am also convinced that the same is passed without adequate application of mind. The petitioner raised various objections with regard to assessment made and also relating to holding the petitioner guilty for abstraction of the electricity unauthorisedly. The appellate authority should have dealt with all the relevant contentions raised by the petitioner while examining correctness of the order passed by the assessing authority.

I found the order passed by the appellate authority is illegal being a non-speaking and unreasoned one, as such, the writ petition assailing validity of the same deserves acceptance.

For the reasons given above, the writ petitions No.4226/2001 and 452/2002 are dismissed as becoming infructuous. The writ petition No.6769/2003 giving challenge to the order passed by the appellate authority is allowed and the order impugned is quashed. The appellate authority shall decide the appeal preferred by the petitioner afresh on or before 3rd December, 2007. The amount already deposited by the

petitioner in pursuant to the order passed by this Court in SBCWP No.4226/2001 shall be kept by the respondents and in the event the appellate authority affirms the assessment, the amount will be payable to the respondent No.1 capable of being subsequently adjusted against the petitioner's liability. In the event the petitioner be not held liable for any dues, the amount deposited by the petitioner shall be refunded with interest @ 6.5% per annum.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.